

Message Text

CONFIDENTIAL

PAGE 01 GENEVA 06422 01 OF 03 271931Z
ACTION DLOS-09

INFO OCT-01 AF-10 ARA-10 EA-10 EUR-12 NEA-10 IO-13
ISO-00 ACDA-12 AGRE-00 AID-05 CEA-01 CEQ-01 CG-00
CIAE-00 COME-00 DODE-00 DOTE-00 EB-08 EPA-01
SOE-02 DOE-15 FMC-01 TRSE-00 H-01 INR-10 INT-05
JUSE-00 L-03 NSAE-00 NSC-05 NSF-01 OES-07 OMB-01
PA-01 PM-05 SP-02 SS-15 ICA-11 OIC-02 /190 W
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FM USMISSION GENEVA
TO SECSTATE WASHDC PRIORITY 8974
LOS COLLECTIVE
AMEMBASSY KATHMANDU
AMEMBASSY SUVA

C O N F I D E N T I A L SECTION 01 OF 03 GENEVA 06422

E.O. 11652:GDS
TAGS: PLOS
SUBJECT: LOS CONFERENCE: APRIL 25 HIGHLIGHTS

BEGIN SUMMARY: AMERASINGHE HELD A GENERAL COMMITTEE
AND PLENARY SESSION WHICH AGREED ON A REVISED WORK
TIMETABLE FOR THE CONFERENCE. THE KOH AND ENGO NEGOTIA-
TING GROUPS DISCUSSED FINANCIAL ARRANGEMENTS AND THE
ORGANS OF THE AUTHORITY. U.S. AND FRENCH POLLUTION
PROPOSALS WERE DISCUSSED IN COMMITTEE III AND ASSOCIATED
NEGOTIATING GROUPS. NEGOTIATING GROUP 7 COMPLETED
DEBATE ON THE DELIMITATION ARTICLES. COMMITTEE II DID
NOT MEET. END SUMMARY.

1. THE GENERAL COMMITTEE UNDER THE CHAIRMANSHIP OF
AMERASINGHE CONVENED TO CONSIDER A REVISED TIMETABLE
OF WORK FOR THE REMAINDER OF THE SESSION. DETAIL SENT
SEPTTEL.

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PAGE 02 GENEVA 06422 01 OF 03 271931Z

THE TIMETABLE WAS ADOPTED WITH SLIGHT MODIFI-
CATIONS. THERE WERE SUGGESTIONS THAT THE FIRST AND
SECOND STAGES OF THE TIMETABLE SHOULD BE LENGTHENED AND
THE FOURTH STAGE ON REVISION OF THE ICNT SHORTENED.

AMBASSADOR RICHARDSON TOLD THE COMMITTEE THAT IT IS
ESSENTIAL TO RESOLVE THE HARD CORE ISSUES AT THIS

SESSION. THIS DEPENDS ON THE WILLINGNESS OF THE CONFERENCE, IN THE LIGHT OF THIS NECESSITY, TO EXPOSE FINAL NEGOTIATING POSITIONS. WITH VITAL INTERESTS AT STAKE WE WILL WITHHOLD OUR CONCESSIONS UNTIL EYEBALL-TO-EYEBALL WITH THE MOMENT OF TRUTH WHICH WILL COME ONLY WHEN WE DECIDE IT MUST COME.

2. THE POSSIBILITY OF EXTENDING THE CONFERENCE BY ONE WEEK WAS DISCUSSED BUT AMERASINGHE NOTIFIED THE COMMITTEE THAT IT NO LONGER NEED FLOG A DEAD HORSE. THERE WAS TO BE NO EXTENSION.

3. THE PLENARY ADOPTED THE TENTATIVE TIMETABLE EXPEDITIOUSLY AND WITHOUT DEBATE. WARIOBA (TANZANIA) CRITICIZED THE APATHY AND LACK OF CONFIDENCE ON THE PART OF MOST DELEGATES TOWARD A SUCCESSFUL CONCLUSION OF THE NEGOTIATIONS. WITH FEW EXCEPTIONS HE SAID LEADERS IN THE CONFERENCE DO NOT ATTEND THE CRITICAL NEGOTIATING GROUP MEETINGS AND THE CONFERENCE MUST COME TO GRIPS WITH THE ISSUES NOW. IF NOT, THE CYNICISM WILL NOT ONLY COME FROM THE INTERNATIONAL COMMUNITY BUT FROM THE DELEGATES OF THIS CONFERENCE AS WELL.

4. THERE WAS NO MEETING OF THE NJENGA GROUP. THE KOH GROUP MET IN THE AFTERNOON AND DISCUSSED TECHNICAL MATTERS RELATING TO THE GENERAL AND SPECIAL FUNDS.
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PAGE 03 GENEVA 06422 01 OF 03 271931Z

SOME DELEGATIONS SUGGESTED THAT ONE FUND WITH DIFFERENT SUB-DIVISIONS WOULD BE SUFFICIENT. THERE IS STILL NO CONSENSUS ON THE TYPE OF LINKAGES WHICH SHOULD EXIST BETWEEN THE TWO FUNDS OR SUBDIVISIONS.

5. THE ENGO GROUP DISCUSSED THE COMPOSITION OF THE COUNCIL. NO NEW POSITIONS WERE TAKEN ON THIS ISSUE. ENGO APPOINTED A SMALL WORKING GROUP TO DISCUSS THIS PROBLEM FURTHER AND REPORT BACK TO THE LARGER WORKING GROUP. THE SMALL GROUP, WHICH IS CHAIRED BY EGYPT, CONSISTS OF: NORWAY, SWEDEN, USSR, USA, MEXICO, PERU, LIBYA, TRINIDAD AND TOBAGO, AND PAKISTAN.

6. ON THE POLLUTION FRONT, THE "CASCADE" GROUP (SUCCESSOR TO THE LEOPARD INFORMAL GROUP) DISCUSSION ON THE PROPOSALS TO AMENDING ARTICLE 212 PRODUCED SOME AGREEMENT ON ROUTING SYSTEMS (212(1)). THE PROPOSAL FOR NOTICE REQUIREMENTS 212(6), RESULTED IN A NORWEGIAN COUNTER PROPOSAL TO PERMIT COASTAL STATES TO REQUIRE NOTICE FROM MASTERS (THIS HAS LITTLE PROSPECT FOR ACCEPTANCE).

7. THE CLARIFICATION OF COASTAL STATE AUTHORITY TO

SET HIGHER DISCHARGE STANDARDS IN THE TERRITORIAL SEA (ARTICLE 212(3)) WAS PARTIALLY ACCEPTED. THE SECOND SENTENCE OF THE PROPOSAL, HOWEVER, WAS CONSIDERED TO BE TOO CONTROVERSIAL FOR DEVELOPING STATES WHO ARGUE THAT MARITIME POWERS WANT TO PREVENT THEM FROM BECOMING MARITIME STATES.

8. THE VALLARTA GROUP CONSIDERED A FRENCH PROPOSAL FOR POOLING OF REGIONAL PORT ENTRY REQUIREMENTS (ARTICLE 212 (2) BIS). THERE WAS STRONG OPPOSITION FROM: CUBA, USSR, BRAZIL, TANZANIA, PORTUGAL, COLOMBIA, UNITED ARAB EMIRATES, GREECE, POLAND, U.K., BULGARIA, CHILE, ZAIRE, MOROCCO, URUGUAY, NORWAY, JAPAN, KENYA, BYELORUSSIAN SSR,

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PAGE 01 GENEVA 06422 02 OF 03 271956Z POSS DUPE
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C O N F I D E N T I A L SECTION 02 OF 03 GENEVA 06422

EGYPT, ISRAEL GERMAN DEMOCRATIC REPUBLIC, JAMAICA,
SINGAPORE AND IRAQ. ONLY THE U.S. AND CANADA SUPPORTED
THE FRENCH PROPOSAL WHILE THE FRG EXPRESSED RESERVATIONS.

9. THE OPPOSITION SUGGESTED:
THAT THE PROPOSAL CONSTITUTED A DEPARTURE FROM INTER-
NATIONAL LAW IN THAT IT WOULD PERMIT STATES TO BIND
OTHER STATES NOT PARTIES TO THE AGREEMENT; THAT THIS
CONSTITUTED A SERIOUS INTERFERENCE WITH INNOCENT
PASSAGE AND; THAT IT WOULD INHIBIT THE EMERGENCE OF
DEVELOPING STATES MARITIME POTENTIAL.

10. THE U.S. INTRODUCED ITS PROPOSAL FOR POOLING OF REGIONAL PORT ENTRY REQUIREMENTS BUT IN LIGHT OF THE REACTION TO THE FRENCH PROPOSAL, IT IS NOT LIKELY TO BE RECEIVED ANY DIFFERENTLY.

11. G-5 POLLUTION/SCIENCE NEGOTIATIONS RESULTED IN AGREE-
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PAGE 02 GENEVA 06422 02 OF 03 271956Z POSS DUPE

MENT ON THE FOLLOWING TEXTS (BUT NO AGREEMENT ON ANY OF THE MORE CONTENTIOUS ISSUES): ARTICLE 212 - PARAGRAPH 1: ADD THE FOLLOWING TO THE END OF THE FIRST SENTENCE OF PARAGRAPH 1: "AND PROMOTE THE ADOPTION OF APPROPRIATE ROUTING SYSTEMS DESIGNED TO MINIMIZE THE THREAT OF ACCIDENTS CAUSING POLLUTION OF THE MARINE ENVIRONMENT, INCLUDING THE COASTLINE AND RELATED INTERESTS OF COASTAL STATES." ARTICLE 212 - PARAGRAPH 3: ADD TO THE END OF THE FIRST SENTENCE OF ARTICLE 212 (3), "ENGAGED IN INNOCENT PASSAGE." ARTICLE 212 - PARAGRAPH 3: ADD AN ADDITIONAL SENTENCE PRIOR TO THE LAST SENTENCE OF ARTICLE 12 (3): "SUCH LAWS AND REGULATIONS SHALL AT LEAST HAVE THE SAME EFFECT AS THAT OF GENERALLY ACCEPTED INTERNATIONAL RULES AND STANDARDS ESTABLISHED THROUGH THE COMPETENT INTERNATIONAL ORGANIZATION OR GENERAL DIPLOMATIC CONFERENCE." ARTICLE 212 - PARAGRAPH 6: ADD A NEW PARAGRAPH TO ARTICLE 212: "THE INTERNATIONAL RULES AND STANDARDS REFERRED TO IN THIS ARTICLE INCLUDE THOSE RELATED TO PROMPT NOTIFICATION OF INCIDENTS INVOLVING DISCHARGE OR PROBABLE DISCHARGE. THE CONTENTS OF A REPORT MADE BY A MASTER IN COMPLIANCE WITH SUCH A REQUIREMENT MAY NOT BE USED AGAINST HIM IN THE DETERMINATION OF ANY CRIMINAL CHARGE MADE AGAINST HIM BY, OR AT THE REQUEST OF, THE COASTAL STATE."

12. THESE PROPOSALS WILL BE PRESENTED TO THE INFORMAL COMMITTEE III VALLARTA GROUP ON APRIL 26.

13. NEGOTIATING GROUP 7 COMPLETED DEBATE ON THE MAIN BOUNDARY DELIMITATION ARTICLES, ARTICLES 74 AND 83. SOMALIA AND CHINA ADDED THEIR SUPPORT TO THE EQUITABLE PRINCIPLES RULE. CHILE, ECUADOR, GREECE, NORWAY AND SIERRA LEONE INTERVENED ON BEHALF OF THE EQUIDISTANCE/
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PAGE 03 GENEVA 06422 02 OF 03 271956Z POSS DUPE

SPECIAL CIRCUMSTANCES RULE.

14. AT THE CONCLUSION OF THIS DEBATE, PERU INTRODUCED THE FOLLOWING PROPOSAL FOR A COMPROMISE AMENDMENT TO PARAGRAPH 1 OF ARTICLES 74 AND 83:

"THE DELIMITATION OF THE EXCLUSIVE ECONOMIC ZONE/ CONTINENTAL SHELF BETWEEN ADJACENT OR OPPOSITE STATES SHALL BE EFFECTED BY AGREEMENT AND IN A MANNER CONSONANT WITH THE PRINCIPLE OF EQUITY. TO THIS END, THE GENERAL METHOD EMPLOYED SHALL BE THE MEDIAN OR EQUIDISTANCE LINE, AND WHERE THERE ARE SPECIAL CIRCUMSTANCES, SUCH CIRCUMSTANCES SHALL BE TAKEN INTO ACCOUNT TO ENSURE THAT THE PRINCIPLE OF EQUITY IS APPLIED."

15. CHAIRMAN MANNER (FINLAND) THEN TURNED TO A DISCUSSION OF ARTICLE 297(1)(A), AN OPTIONAL EXCEPTION OF MARINE BOUNDARY DISPUTES FROM PART XV. ARGENTINA PROPOSED THE DELETION OF THE PORTION REQUIRING THE STATE UTILIZING THAT EXCEPTION TO NAME AN ALTERNATIVE BINDING PROCEDURE WHICH IT ACCEPTS INSTEAD OF PART XV. ELEVEN STATES SUPPORTED THIS: BULGARIA, GERMAN DEMOCRATIC REPUBLIC, GUATEMALA, INDONESIA, LIBYA, ROMANIA, TURKEY, UKRAINIAN SSR, USSR, VENEZUELA, VIETNAM. SEVEN STATES OPPOSED ARGENTINA'S PROPOSAL, THUS ENDORSING COMPULSORY DISPUTE SETTLEMENT: COLOMBIA, CYPRUS, ITALY, JAPAN, JORDAN, MALTA AND THE NETHERLANDS. NINE OTHER STATES SUPPORTED COMPULSORY SETTLEMENT OF DELIMITATION DISPUTES WITHOUT SPECIFICALLY OPPOSING ARGENTINA: CHILE, HONDURAS, IRAQ, ISRAEL, OMAN, REPUBLIC OF KOREA (ROK), SPAIN, UNITED ARAB EMIRATES (UAE) AND THE U.S. CHILE AND ISRAEL SUGGESTED CHANGING ARTICLE 297(1)(A) TO REQUIRE THE EXCEPTING STATE TO MAKE ITS ALTERNATIVE ACCEPTANCE AT THE TIME OF RATIFICATION RATHER THAN BEING ALLOWED TO WAIT UNTIL THE DISPUTE ARISES. THESE SUGGESTIONS WERE SUPPORTED BY OMAN, ROK AND SPAIN. IRAQ AND JORDAN

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PAGE 04 GENEVA 06422 02 OF 03 271956Z POSS DUPE

SUGGESTED THAT 297(1)(A) BE DELETED ENTIRELY, THUS

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PAGE 01 GENEVA 06422 03 OF 03 271956Z POSS DUPE
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C O N F I D E N T I A L SECTION 03 OF 03 GENEVA 06422

ELIMINATING THE EXCEPTION.

16. THE U.S. (SOHN) NOTED THE DIAMETRIC DIVISION ON THIS ISSUE, AND SUGGESTED THAT A COMPROMISE MIGHT BE IN ORDER. TWO WERE PUT FORWARD FOR CONSIDERATION. PAST DISPUTES MIGHT BE EXCEPTED, EITHER BY SELECTION OF A SPECIFIC CUT-OFF DATE -- JANUARY 1, 1978, WAS OFFERED -- OR BY EXCEPTING DISPUTES RELATING TO PAST SITUATIONS OR FACTS. CASE LAW AND DECLARATIONS OF ACCEPTANCE OF THE ICJ'S JURISDICTION, INCLUDING THAT OF THE U.S., WERE CITED AS PRECEDENTS FOR SUCH LIMITATIONS ON JURISDICTION. IF THE CUT-OFF DATE WERE ALREADY IN THE PAST, THE LIMITATION WOULD NOT PRECIPITATE A RUSH TO ESTABLISH DISPUTES BEFORE THE DEADLINE. THE SECOND COMPROMISE OFFERED WAS THE POSSIBILITY OF HAVING THE COURT OR TRIBUNAL GIVE THE PARTIES ONLY GUIDELINES FOR THE APPLICATION OF THE LAW TO THEIR PARTICULAR CASE. WHILE THE PARTIES WOULD BE BOUND TO FOLLOW THESE GUIDELINES, THEY WOULD BE FREE TO EFFECT THE ACTUAL DELIMITATION BY NEGOTIATION. THE CONFIDENTIAL

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PAGE 02 GENEVA 06422 03 OF 03 271956Z POSS DUPE

UAE SUPPORTED THE FIRST COMPROMISE, AND HONDURAS THE SECOND. AFTER THE MEETING, TURKEY AND GREECE INDEPENDENTLY AND PRIVATELY APPROACHED THE U.S. AND ENDORSED THE SECOND COMPROMISE.

17. CHAIRMAN MANNER INDICATED THAT HE WOULD STUDY THE DEBATE TO SEE IF COMPROMISE FORMULAS WERE POSSIBLE. HE HAD ALREADY CONSULTED WITH A NUMBER OF DELEGATIONS, AND ON THE BASIS OF THESE AND THE DEBATE, HE WILL DRAFT SUCH PROPOSED COMPROMISES AS SEEM APPROPRIATE. THESE DRAFTS WILL BE CIRCULATED FOR CONSIDERATION DURING THE NEXT FEW DAYS WHILE MANNER IS OUT OF TOWN. THE FINAL

MEETING OF THE GROUP, ON MAY 2, WILL CONSIDER THESE
DRAFTS, AND IF NO NEW COMPROMISE EMERGES, THE ICNT WILL
PREVAIL. CANADA, CHILE, COLOMBIA AND SPAIN OBJECTED TO
THIS LAST CONCLUSION, WHILE TURKEY OBJECTED TO THE
"CHAIRMANSHIP" PROCEDURE BEING APPLIED IN THIS NEGOTIATING
GROUP. RICHARDSON

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